REMARKS

Status Summary

Claims 1-10, 12, 14-33 and 36-39 are pending in the present application. Claims 1-10, 12, 14-33 and 36-39 presently stand rejected. Claims 11, 13, 34 and 35 were previously canceled. Reconsideration of the application is respectfully requested.

Claim Rejections – 35 U.S.C. § 103

Claims 1-3, 6, 8-10, 12, 16 and 19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over International Patent Publication No. WO 98/30262 to Dmitrovic et al. (hereinafter "Dmitrovic"). Claims 4, 5, 7, 21, 24-27, 30-33, and 36-39 are rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,062,214 to Howlett et al. (hereinafter, "Howlett") in view of Dmitrovic. Claims 14, 15, 17, 18 and 28-29 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Howlett in view of Dmitrovic and further in view of International Patent Publication No. WO 98/56444 to Rand et al. (hereinafter "Rand"). These rejections are respectfully traversed.

Independent claim 1 recites a container having a first part, a second part and a hinge through which the first and second parts are hingeably connected so that the parts are hingeable relative to one another between a first position which places the container in a closed state and a second position which places the container in an open state. Claim 1 also recites that the first and second parts are pivotally connected so that the parts are able to be pivoted relative to one another to different angular positions. Additionally, claim 1 recites that the first part is configured to be pivotal to a

first angular position disposed behind the second part. Claim 1 further recites that the first part and the second part are configured to nest together in a nesting state when the first part is in the first angular position.

Applicants respectfully submit that Dmitrovic does not render independent claim 1 or the claims that depend therefrom *prima facie* obvious, because there has been no finding that the prior art includes each element claimed in independent claim 1. For example, Dmitrovic does not disclose, teach, or suggest a container having a first part configured to be pivotal to a first angular position disposed behind a second part and the first part and the second part configured to nest together in a nesting state when the first part is in the first angular position.

The Examiner stated in the Official Action dated September 5, 2008, that Dmitrovic appreciates that the angle of rotation of the dust cover can be substantially increased and if the dust cover is rotated 180° from the mouthpiece, and the cover is flipped upwards, then the device of Dmitrovic can have a first part that can be pivotal to a first angular position disposed behind a second part with the first part and second part configured to nest together.

Dmitrovic discloses two embodiments of an inhalation device comprising a body **5**, **55** defining a reservoir **6**, **56** for medicament in the form of a powder, a mouthpiece **7**, **57** through which a user can inhale, and a dosing member **3**, **53** with at least one metering recess **22**, **65** formed therein. A lower body portion **9**, **59** is pivotally connected to main body **5**, **55** such that it may rotate about the vertical axis of the device so that the dosing member **3**, **53** is moveable between a first position in which

the at least one metering recess **22**, **65** communicates with the reservoir **6**, **56** to receive a dose of powder therefrom and a second position in which the at least one metering recess **6**, **56** communicates with the mouthpiece **57** to permit the user to inhale the dose. In the device shown in Figures 1 and 2, the aperture **11** is radially offset by an angle of 90° about the vertical axis of the device from the aperture **8** at the inner end of the mouthpiece **7** to allow the dust cover **33** and lower body portion **9** to be moved through 90° for ease of access to mouthpiece **7**. Dmitrovic discloses that this angle can be substantially increased or slightly decreased according to the desired angle of rotation of the dust cover, lower body portion and dosing member.

Even though Dmitrovic does disclose that the dust cover can be rotated more than 90°, Dmitrovic does not disclose, teach, or suggest that the first part is configured to be pivotal to an angular position behind a second part, which, in the case of the inhaler of Dmitrovic, is 180°. The wording in Dmitrovic that the "angle can be substantially increased" provides no teaching or suggestion to one of ordinary skill in the art that it would be useful for the dust cover to be rotatable 180°, i.e., double the explicit teaching of Dmitrovic, or that a first part of the container should be positioned behind a second part after rotation.

More importantly, Dmitrovic does not disclose, teach or suggest that the first part and the second part of the container are configured to nest together in a nesting state when the first part is in the first angular position. The Examiner asserts that dust cover

33, **63** of Dmitrovic can be flipped up into a nesting state with the main body portion **5**, **55** after rotation of the dust cover **33**, **63**. Applicants respectfully disagree.

Dmitrovic does not disclose, teach or suggest that the dust cover **33**, **63** can nest with the back side of the main body portion **5**, **55** after rotation the dust cover **33**, **63** 180°. There is no information in Dmitrovic concerning the relative dimensioning of the dust cover and inhaler body portion that would be needed to enable nesting to occur even assuming *arguendo* that the dust cover were reconfigured to rotate behind the inhaler body. There is no disclosure at all in Dmitrovic that upon any rotation of the dust cover that it can then be flipped up to engage with the main body portions. In fact the inhaler body illustrated in Figures 1-8 teach away from such nesting other than when the dust cover is in the position to cover the mouthpiece of the inhaler.

As shown in Figures 1, 4, 5, 6, and 8, the front side of the main body portion has a nesting grove or indention cut in an upside down U-shape around the mouthpiece with the grove extending downward on both sides of the mouthpiece all the way to the lower body portion. This groove or indention permits the dust cover to not only fit snugly in a closed position over the mouthpiece, but also permits the dust cover to pivot upward from the lower body portion to the closed position. For example, as can be seen in Figures 1 and 2, the lower body portion does not extend out past the main body. Thus, the pivot **34** is located inward of the outer perimeter of the main body portion. Further, the dust cover as shown in the figures has a cavity that is not wider than the main body portion, but rather the cavity of the dust cover has a width that is generally less than the

main body portion so that when the dust cover is raised to a closed position, it enters into the groove or indention that is cut or formed in the side of the main body portion. Since the main body is wider than the cavity of the dust cover and the pivot is at a portion of the lower body portion inward from the outer perimeter of the main body portion, the dust cover cannot be flipped up, much less nested with the main body portion, when the dust cover is not aligned with the groove or indention in the main body portion because the larger width of the main body portion blocks the upward movement of the dust cover.

Similarly, in the embodiment shown in Figures 6-8 the cavity of the dust cover is of a lesser width than the main body portion so that when the dust cover is raised to a closed position, it enters into the groove or indention that is cut or formed in the side of the main body portion around the mouthpiece. Since the main body is wider than the cavity of the dust cover, the dust cover again cannot be flipped up or be nested with the main body portion when the dust cover is not aligned with the groove or indention in the main body portion because the wider girth of the main body portion blocks the upward movement of the dust cover.

Thus, Dmitrovic fails to disclose, teach or suggest a nesting together of two parts when one part is pivoted behind the other part, and also, Dmitrovic actually teaches away from such nesting. Therefore, Dmitrovic does not render claim 1 or claims 2-3, 6, 8-10, 12, 16 and 19 that depend therefrom *prima facie* obvious.

Claims 4, 5, 7, 14, 15, 17, 18, 21, 24-33 and 36-39 depend from claim 1. Claim 1 is not rendered obvious by Howlett, Dmitrovic, or Rand, alone or in combination. Howlett discloses an inhaler for transferring to a patient a metered dose of medicament contained in a pressurized dispensing container. The inhaler includes a housing for receiving a pressurized dispensing container of medicament and a mouthpiece for insertion into the mouth or a user of the inhaler. An outlet in the housing communicates with the mouthpiece via a duct ending in an outlet. Howlett further discloses a cover for the mouthpiece. The cover fits over the open mouthpiece and is connected by a flexible hinge portion to a cover attachment which fits in the lower part of the housing to attach the cover to the housing. When not in use, the cover is placed over the mouthpiece and when the inhaler is to be used, the cover is removed by hinging it away from the mouthpiece as shown in Figure 3.

Howlett does not disclose, teach, or suggest that a first part and a second part of a container are configured to nest together in a nesting state when the first part is in the first angular position. As described above, Dmitrovic also does not disclose, teach, or suggest that the first part and the second part of the container are configured to nest together in a nesting state when the first part is in the first angular position. Thus, since Howlett or Dmitrovic, alone or in combination, fail to disclose, teach, or suggest every element of claim 1, claims 4, 5, 7, 21, 24-27, 30-33, and 36-39 that depend from claim 1 are not rendered prima facie obvious.

Rand does not overcome the significant shortcomings of both Howlett and Dmitrovic. Rand discloses a dispenser with a dose indicator therein. Rand does not

disclose, teach, or suggest, for example, that a first part and a second part of a container are configured to nest together in a nesting state when the first part is in the first angular position.

Thus, Howlett, Dmitrovic, or Rand, alone or in combination, do not disclose, teach, or suggest all the features recited by claim 1. Accordingly, since claims 14, 15, 17, 18, and 28-29 depend from claim 1, applicants respectfully submit that these claims are not rendered obvious by these cited references.

Therefore, for at least the reasons stated above, applicants respectfully submit that the rejections of claims 1-10, 12, 14-19, 21, 24-33 and 36-39 under 35 U.S.C. § 103(a) should be withdrawn and the claims allowed at this time. It is noted that claims 20 and 22-23 are not formally addressed or rejected in the Official Action dated September 5, 2008. However, since claims 20 and 22-23 also depend from claim 1, claims 20 and 22-23 are patentable over the cited references as well.

CONCLUSION

In light of the above remarks, it is respectfully submitted that the present application is in proper condition for allowance, and an early notice to such effect is earnestly solicited.

If any small matter should remain outstanding after the Patent Examiner has had an opportunity to review the above Remarks, the Patent Examiner is respectfully requested to telephone the undersigned patent attorney in order to resolve these matters and avoid the issuance of another Official Action.

DEPOSIT ACCOUNT

The Commissioner is hereby authorized to charge any fees associated with the filing of this correspondence to Deposit Account No. **50-0426**.

Respectfully submitted,

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Date: November 4, 2008 By: _____

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